

ORIGINAL

90-7928

No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1990

RALPH CECIL FELTROP,

Petitioner,

vs.

STATE OF MISSOURI,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION

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STATEMENT OF THE CASE

Petitioner, Ralph Cecil Feltrop, was convicted of murder in the first degree, §565.020, RSMo 1986, for which he was sentenced to death. Petitioner filed a direct appeal. Petitioner then filed a motion to vacate, set aside, or correct the judgment or sentence of the trial court pursuant to Missouri Supreme Court Rule 29.15. Petitioner's Rule 29.15 motion was consolidated with his direct appeal. The facts relating to petitioner's offense are summarized in the opinion of the Missouri Supreme Court affirming petitioner's conviction, sentence, and the denial of post-conviction relief. State v. Feltrop, 803 S.W.2d 1 (Mo. banc 1991). Respondent does not dispute that petitioner's contentions were raised before the Missouri Supreme Court.

ARGUMENT

Use of Judicially-Narrowed Aggravating Circumstance

Petitioner seeks review of the Missouri Supreme Court's finding that the "depravity of mind" aggravating circumstance, which was found in this case, furnished sufficient guidance to the final sentencer (Petition at 6). He alleges that the jury, not the trial judge, is the final sentencer under Missouri law, and that the jury was not given the narrowed construction of the aggravating circumstance which has been adopted by Missouri courts (Petition at 6).

The aggravating circumstance which was submitted to the jury was based on §565.032.2(7), RSMo 1986. State v. Feltrop, 803 S.W.2d 1, 14 (Mo. banc 1991). That statute states: "The murder in the first degree was outrageously or wantonly vile, horrible or inhuman in that it involved torture, or depravity of mind." The jury found as an aggravating circumstance beyond a reasonable doubt: "The murder of Barbara Ann Roam involved depravity of mind and as a result thereof it was outrageously or wantonly vile, horrible or inhuman." State v. Feltrop, *supra*.

The Missouri Supreme Court recognized that the language "depravity of mind . . . outrageously or wantonly vile, horrible or inhuman", without further definition, is too vague to provide adequate guidance to a sentencer. *Id.* However, unlike the court in Maynard v. Cartwright, 486 U.S. 356, 108 S.Ct. 1853, 100 L.Ed.2d 372 (1988), the Missouri Supreme Court has adopted a narrowing construction of §565.032.2(7). The factors

to be considered in determining whether depravity of mind exists include:

mental state of the defendant, infliction of physical or psychological torture upon the victim as when the victim has a substantial period of time before death to anticipate and reflect upon it; brutality of defendant's conduct; mutilation of the body after death; absence of any substantive motive; absence of defendant's remorse and the nature of the crime.

State v. Preston, 673 S.W.2d 1, 11 (Mo. banc 1984), cert. denied, 469 U.S. 893, 105 S.Ct. 269, 83 L.Ed.2d 205 (1984). In State v. Griffin, 756 S.W.2d 475, 490 (Mo. banc 1988), cert. denied, 109 S.Ct. 3175 (1989), the court further explained that the "'mental state of defendant' factor means that the defendant must have acted with callous disregard for the sanctity of life as, for instance, where the defendant plans a robbery with the intent to kill all witnesses and has no apparent moral compunctions about such a cause of action or where the victim was killed while helplessly bound, after being otherwise incapacitated, or after complying with all of defendant's demands without resistance."

It is true that this limiting definition was not given to the jury. However, under Missouri law, a jury is not the final sentencer. The trial judge is. State v. Feltrop, supra at 15.

In the case at bar, for instance, after the jury recommended a sentence of death, the petitioner asked the trial judge, pursuant to Missouri Supreme Court Rule 29.05, to reduce his sentence because the evidence allegedly failed to establish beyond a reasonable doubt that any aggravating circumstance

existed. Id. at 15-16. The trial judge, acting as the final sentencer, conducted a hearing on the motion and denied petitioner's request. Id. at 16.

The Missouri Supreme Court's finding that under Missouri law the trial judge is the final sentencer concerns an issue of state law. As this Court is well aware, the views of a state's highest court with respect to state law are binding on the federal courts. Wainwright v. Goode, 464 U.S. 78, 84, 104 S.Ct. 378, 382, 78 L.Ed.2d 187 (1983).

It is important that the trial judge, under Missouri law, was the final sentencer, because this means that the final sentencer was properly instructed regarding all aspects of the sentencing process in that "[t]rial judges are presumed to know the law and apply it in making their decisions." Walton v. Arizona, 110 S.Ct. 3047, 3057 (1990). As this Court stated in Walton v. Arizona, supra:

If the Arizona Supreme Court has narrowed the definition of "especially heinous, cruel or depraved" aggravating circumstances, we presume that Arizona trial judges are applying the narrower definition. It is irrelevant that the statute itself may not narrow the construction of the factor.

Thus, it is clear that the final sentencer in the case at bar had adequate guidance that it was presumed to know and apply the judicially narrowed definition of the depravity of mind circumstance which is contained in Preston and Griffin.

Further, as this Court also recognized in Walton v. Arizona, supra at 3057:

even if a trial judge fails to apply the narrowing construction or applies an improper

construction, the Constitution does not necessarily require that a state appellate court vacate a death sentence based on that factor. Rather, as we held in Clemmons v. Mississippi, 494 U.S. ___, 110 S.Ct. 1441, 108 L.Ed.2d 725 (1990), a state appellate court may itself determine whether the evidence supports the existence of the aggravating circumstance as properly defined. . . .

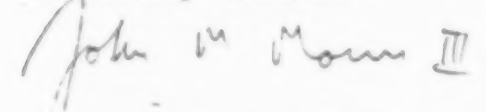
In the case at bar, §565.035.3, RSMo 1986, required the Missouri Supreme Court to perform an independent review to determine whether the evidence supported the jury's or the judge's finding of any aggravating circumstances found. State v. Feltrop, supra at 16. The Missouri Supreme Court performed such a review, explicitly used the judicially-narrowed construction of the depravity of mind aggravating circumstance, and found that said circumstance was adequately supported by the evidence. Id. at 16-17. Thus, even if both the jury and the trial judge did not consider the judicially-narrowed definition of the aggravating circumstance no error of constitutional magnitude occurred, because the record shows that the Missouri Supreme Court did in fact apply the judicially-narrowed definition. Id. at 16-17.

CONCLUSION

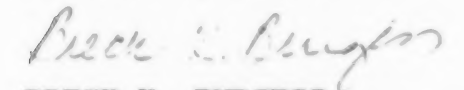
In view of the foregoing, respondent submits that the petition for writ of certiorari should be denied.

Respectfully submitted,

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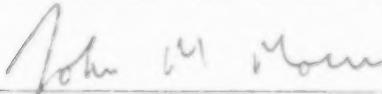
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CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of this Court, and that a true and correct copy of the Brief of Respondent in Opposition to Petition in the case of Ralph Cecil Feltrop v. State of Missouri, was mailed, pursuant to Supreme Court Rule 28.5(b), postage prepaid, this 29th day of May, 1991, to:

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